

CHAPTER 1028

REGULATION OF BANKING

S.F. 2191

AN ACT relating to and making changes to matters under the purview of the division of banking of the department of commerce, making a penalty applicable, and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 12C.1, subsection 2, paragraph a, Code 2009, is amended to read as follows:

a. “Bank” means a corporation or limited liability company engaged in the business of banking ~~authorized by law to receive deposits and whose deposits are insured by the bank insurance fund or the savings association insurance fund of the federal deposit insurance corporation and includes any office of a bank and organized under the laws of this state, another state, or the United States.~~ “Bank” also means a savings and loan, ~~or savings association, or savings bank organized under the laws of this state, another state, or the United States.~~

Sec. 2. Section 12C.1, subsection 2, Code 2009, is amended by adding the following new paragraph:

NEW PARAGRAPH. 0h. “Superintendent” means the superintendent of banking of this state when the depository is a bank, and the superintendent of credit unions of this state when the depository is a credit union.

Sec. 3. Section 12C.23A, subsection 1, Code 2009, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Consent to the jurisdiction and authority of the superintendent as provided under section 12C.29.

Sec. 4. Section 12C.28, Code 2009, is amended to read as follows:

12C.28 Electronic reporting.

Any notice, information, report, or other communication required by this chapter shall be deemed effective and in compliance with this chapter if sent or given electronically as provided in rules adopted pursuant to chapter 17A by the appropriate superintendent or the treasurer of state.

Sec. 5. NEW SECTION. **12C.29 Authority of superintendent to issue orders.**

1. If it appears to the superintendent that a bank is violating or has violated, or the superintendent has reasonable cause to believe that a bank is about to violate, any provision of this chapter or any rules adopted pursuant thereto, or if a bank is less than well capitalized as defined in 12 U.S.C. § 1831o(b)(1)(A), or if a bank is subject to a final order or written agreement subject to the public disclosure requirements of 12 U.S.C. § 1818(u), the superintendent may issue an order requiring the bank to do one or more of the following:

- a. Not accept uninsured public funds deposits.
- b. Reduce the amount of uninsured public funds accepted.
- c. Return to the depositors some or all uninsured public funds held in demand deposits and, when deposit instruments or agreements mature, return to the depositors some or all uninsured deposits representing proceeds of such instruments or agreements.
- d. Pledge collateral to the treasurer of state, with such collateral having a value at all times up to one hundred ten percent of the public funds held by the bank.
- e. Comply with such other requirements as the superintendent may impose.

2. An order issued pursuant to this section shall become effective upon service of the order on the bank and shall remain effective except to such extent modified, terminated, or set aside by action of the superintendent or of the district court of Polk county as provided in subsection 3.

3. An order issued pursuant to this section shall contain a concise statement of the facts forming the basis for issuing the order and shall provide the bank an opportunity to appeal the order by requesting a hearing. If the bank requests a hearing, the hearing shall be fixed for a date not later than thirty days after the service of the order unless a later date is set at the request of the bank. If upon the record made at the hearing, the superintendent finds that the grounds for the order have been established, the superintendent may issue and serve upon the bank an order upholding the original order. If the superintendent finds the grounds for the order have not been established, the superintendent shall set aside the original order or modify the order, as the superintendent deems appropriate. An administrative law judge may assist the superintendent at the hearing or, at the superintendent's request, preside over the hearing. The hearing shall not be open to the public. The superintendent's decision shall be subject to judicial review in Polk county district court in accordance with the provisions of chapter 17A.

4. An order issued pursuant to this section shall be confidential, and the Polk county district court shall review the record in camera and shall maintain filings of any judicial review filed pursuant to section ¹ 3 under seal.

5. This section is intended to provide the superintendent additional authority and regulatory flexibility in regulating a bank that accepts public funds deposits and whose financial condition, level of public funds, or level of collateral may pose a greater than normal risk of loss coverage from the state sinking fund applicable for uninsured and unsecured public funds.

6. An act or omission by the superintendent pursuant to this section shall not subject the state to liability.

Sec. 6. Section 524.213, Code 2009, is amended to read as follows:

524.213 Duties and powers of superintendent.

The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration, interpretation, and execution of the laws, rules, and regulations of this state relating to banks and banking and with such other duties and responsibilities as are imposed upon the superintendent by the laws of this state. The superintendent shall have power to adopt and promulgate such rules and regulations as necessary to carry out and enforce, properly and effectively, the provisions of this chapter and chapter 12C applicable to banks.

Sec. 7. Section 524.215A, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 4. The division of banking may adopt a record retention policy authorizing the division to destroy communications received by electronic mail that are more than six months old.

Sec. 8. Section 524.310, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A state bank using a fictitious name to transact business in this state may file its fictitious name with the secretary of state by delivering to the superintendent for filing with the secretary of state a copy of the resolution of its board of directors certified by its secretary, adopting the fictitious name. A state bank using a fictitious name shall comply with the requirements of section 524.1206 and with any other regulatory requirements governing use of its name. The fictitious name must be distinguishable upon the record of the secretary of state from all of the following:

a. The corporate name of a business or nonprofit corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved, registered, or protected as provided in section 490.402, 490.403, 504.402, or 504.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

¹ According to enrolled Act; the word "subsection" probably intended

Sec. 9. Section 524.602, Code 2009, is amended to read as follows:

524.602 Board of directors — election.

1. ~~At~~ Except as provided in subsection 2, at the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Directors shall hold office for one year or until their successors have been elected and qualified, unless removed in accordance with provisions of section 524.606. When the shareholders determine the number of directors at an annual meeting or at a special meeting, they shall, at the same meeting, elect a director to fill each directorship.

2. The articles of incorporation of a state bank may authorize directors to be elected to staggered terms of three years. At the first meeting of shareholders or at an annual or special meeting where the shareholders adopt staggered terms for directors, and at each annual meeting thereafter, the shareholders shall elect directors to hold office for any vacant position. A director shall hold office until the director's term expires or until the director's successor has been elected and qualified, unless the director is removed in accordance with the provisions of section 524.606.

Sec. 10. Section 524.814, subsection 1, Code 2009, is amended to read as follows:

1. To secure deposits of the state bank or a bank that is an affiliate of the state bank when a customer is required to obtain such security, or a bank is required to provide security, by the laws of the United States, by any agency or instrumentality of the United States, by the laws of the state of Iowa or another state, by the state board of regents, by a resolution or ordinance relating to the issuance of bonds, by the terms of any interstate compact or by order of any court of competent jurisdiction. The lending of securities to a bank that is an affiliate, or the pledging of securities for the account of a bank that is an affiliate, shall be on terms and conditions that are consistent with safe and sound banking practices.

Sec. 11. Section 524.901, subsection 2, Code 2009, is amended to read as follows:

2. A state bank shall not invest for its own account more than fifteen percent of its aggregate capital in investment securities of any one obligor. ~~Any~~ The par value of the investment securities shall be used to determine the amount that may be invested under this subsection, and any premium paid by a state bank for any investment securities shall not be included in determining the amount that may be invested under this subsection.

Sec. 12. Section 536.13, subsection 7, paragraph d, Code 2009, is amended by striking the paragraph and inserting in lieu thereof the following:

d. Except as provided in this subsection, the provisions of the Iowa consumer credit code, chapter 537, apply to loans regulated by this chapter and supersede conflicting provisions of this chapter. Section 537.2402, subsection 1, does not apply to loans regulated by this chapter.

Sec. 13. Section 536A.31, subsection 3, Code 2009, is amended by striking the subsection and inserting in lieu thereof the following:

3. Except as provided in this subsection, the provisions of the Iowa consumer credit code, chapter 537, apply to loans regulated by this chapter and supersede conflicting provisions of this chapter. Section 537.2402, subsection 1, does not apply to loans regulated by this chapter.

Sec. 14. EFFECTIVE UPON ENACTMENT. The sections of this Act amending sections 12C.1, 12C.23A, and 12C.28 and enacting section 12C.29, being deemed of immediate importance, take effect upon enactment.

Approved March 8, 2010

CHAPTER 1029**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS***S.F. 2248*

AN ACT relating to permits issued under the national pollutant discharge elimination system, and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
PERSONS CONTESTING THE DENIAL
OF APPLICATIONS OR PERMITS ISSUED UNDER NPDES

Section 1. Section 455B.174, subsection 4, paragraph b, Code Supplement 2009, is amended to read as follows:

b. In addition to the requirements of paragraph “a”, a permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act. All applications for discharge permits are subject to public notice and opportunity for public participation including public hearing as the department may by rule require. The director shall promptly notify the applicant in writing of the director’s action and, if the permit is denied, state the reasons for denial. The A person who is an applicant or permittee may appeal to the commission from contest the denial of a permit or from any condition in any of a permit issued by the director, if the applicant files notice of appeal with person notifies the director within thirty days of the director’s notice of denial or issuance of the permit. The director shall notify the applicant within thirty days of the time and place of the hearing. Notwithstanding section 17A.11, subsection 1, if the applicant or permittee timely contests the director’s action, the presiding officer in the resulting contested case proceeding shall be an administrative law judge assigned by the division of administrative hearings pursuant to sections 10A.801 and 17A.11.

DIVISION II
NPDES PERMITS ISSUED TO CONFINEMENT FEEDING OPERATIONS

Sec. 2. Section 459.311, Code Supplement 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. Notwithstanding subsection 1, a confinement feeding operation that is a concentrated animal feeding operation as defined in 40 C.F.R. § 122.23(b) shall comply with applicable national pollutant discharge elimination system permit requirements as provided in the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412, pursuant to rules that shall be adopted by the commission. Any rules adopted pursuant to this subsection shall be no more stringent than requirements under the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

Approved March 8, 2010